



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FCP/150507

PRELIMINARY RECITALS

Pursuant to a petition filed July 09, 2013, under Wis. Admin. Code § DHS 10.55, to review a decision by the Community Care, Inc. (Community Care) in regard to Medical Assistance, a hearing was held on August 19, 2013, at Kenosha, Wisconsin.

The issue for determination is whether Community Care correctly terminated Petitioner's non-medical transportation.

NOTE: The record was held open to give Community Care an opportunity to submit a copy of Petitioner's Individualized Plan. It has been marked as Exhibit 3 and entered into the record.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Witness for Petitioner: [REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703

By: Patty Miller, Supervisor; Vikki Martins, Case Manager; Stacey Travis,
Family Care Case Manager
Community Care Inc.
205 Bishops Way
Brookfield, WI 53005

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Kenosha County.
2. Petitioner is cognitively delayed and receives services through Family Care. (Testimony of Petitioner)
3. Petitioner's individualized plan dated 12/1/12 to 5/31/13 provided transportation through K-Town; 4 times per month to Racine County Human Services, 5 times per month to Wal-Mart, 2 times per month to the Salvation Army. All other transportation was to be evaluated on a case by case basis using the RAD method. (Exhibit 3, pg. 3)
4. On May 22, 2013, Community Care reviewed Petitioner's individualized plan. (Exhibit 3, pgs. 8-13)
5. On an unspecified date, Community Care terminated Petitioner's transportation services. (Exhibit 1)
6. On June 27, 2013, Community Care's Grievance and Appeals Committee sent Petitioner a letter indicating that it was denying her appeal of the termination of transportation services. (Exhibit 1, pg. 3)
7. Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on July 9, 2013. (Exhibit 1)

DISCUSSION

The Family Care Program is a subprogram of Wisconsin's Medical Assistance (MA) program and is intended to allow families to arrange for long-term community-based health care and support services for older or impaired family members without resort to institutionalization, *Wis. Stats.* §46.286; *Wis. Admin. Code* §DHS 10.11. The Family Care Long Term Care program (FCP) is a long-term care benefit for the elderly, people with physical disabilities and those with developmental disabilities. *Medicaid Eligibility Handbook (MEH)*, §29.1.

An individual, who meets the functional and financial requirements for Family Care, participates in Family Care by enrolling with a Care Management Organization (CMO), which, in turn, works with the participant and his/her family to develop an individualized plan of care. *See Wis. Stats.* §46.286(1) and *Wis. Admin. Code* §DHS 10.41. The CMO, in this case Community Care, implements the plan by contracting with one or more service providers.

Wis. Admin. Code DHS 10.41(2) states that:

Services provided under the family care benefit shall be determined through individual assessment of enrollee needs and values and detailed in an individual service plan unique to each enrollee. As appropriate to its target population and as specified in the department's contract, each CMO shall have available at least the services and support items covered under the home and community-based waivers under 42 USC 1396n (c) and ss. 46.275, 46.277 and 46.278, Stats., the long-term support community options program under s. 46.27, Stats., and specified services and support items under the state's plan for medical assistance. In addition, a CMO may provide other services that substitute for or augment the specified services if these services are cost-effective and meet the needs of enrollees as identified through the individual assessment and service plan.

Emphasis added

The aforementioned administrative code further notes that transportation is among the services that typically will be required to be available. *Id.*

In the case at hand, Petitioner filed an appeal, because Community Care terminated her transportation services. It is the position of Community Care that Petitioner no longer needs transportation services through Family Care because she has informal supports in place and can use public transportation.

It is a well-established principle that a moving party generally has the burden of proof, especially in administrative proceedings. State v. Hanson, 295 N.W.2d 209, 98 Wis. 2d 80 (Wis. App. 1980). In a case involving the termination of services, the agency bears the burden to establish that it acted correctly.

Reviewing Petitioner's individualized plans for 12/1/12 to 5/31/13 and 6/1/13 to 11/30/13, it does not appear that there was any change that would warrant termination of her transportation services. (See Exhibit 3) First, nothing in those documents show an actual decrease in her need for transportation. Second, there was no significant change in her goals. Petitioner's individualized plan dated 12/1/12 to 5/31/13, indicated, among other things, that Petitioner would, "like to earn money" and "move to a new apartment". (Id) Petitioner's stated her goals in the individualized plan dated 6/1/13 to 11/30/13 as, "I want to look for a nicer house" and "I want to take care of my kids". (Exhibit 3, pg. 8) Third, nothing in the individualized plan dated 6/1/13 to 11/30/13 indicated that Petitioner was now able to use the bus independently. Fourth, although the most recent individualized plan indicated that Petitioner had natural supports to assist her on the bus, it did not specify what those supports were. (Id. at pg. 9)

At the hearing, Community Care indicated that it did not know for sure whether Petitioner could use a bus independently, because it received inconsistent information with regard to Petitioner's abilities. I would note that Petitioner's most recent individualized plan indicated that the informal supports could help her on the bus, which would imply that she is not able to use the bus independently.

Petitioner, in her testimony, was able to name three bus routes and where they could take her, but that does not mean she can use the bus safely and independently. Wisconsin Administrative Code states that the CMO, through its case management team, shall monitor the health and safety of the enrollee. Wis. Admin. Code §DHS 10.44(2)(d)3, *emphasis added*. Thus, without a showing that Petitioner can independently and safely use the bus, there is no basis to terminate her transportation services.

Community Care indicated that Petitioner's boyfriend, sister and mother could assist her on the bus or do her shopping for her and that her grandmother could drive her when needed. However, it is undisputed that Petitioner's boyfriend is visually impaired and has his own limitations. Further, Community Care did not provide any documentation from Petitioner's mother, sister or grandmother showing that they are able, available, and willing to provide transportation to Petitioner. According to Petitioner, they are not reliable sources of transportation because they have their own health issues or family obligations. Community Care indicated that this was new information and did not refute it.

Based upon all of the foregoing, it is found that Community Care has not met its burden to show that it correctly terminated Petitioner's transportation services.

Petitioner should note, however, that once she is able to demonstrate to Community Care that she can safely and independently use the bus, the issue of the cost effectiveness of transportation services through Family Care, may be revisited.

CONCLUSIONS OF LAW

Community Care did not correctly terminate Petitioner's transportation services.

THEREFORE, it is

ORDERED

That Community Care re-instate Petitioner's transportation services, to the levels allowed in the individualized plan dated 12/1/12 to 5/31/13. Community Care shall take all administrative steps necessary to complete this task within ten days of this decision.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 11th day of September, 2013.

\sMayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on September 11, 2013.

Community Care Inc.
Office of Family Care Expansion